

Annual Report

2016



pennsylvania
OFFICE OF OPEN RECORDS

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Introduction

2016

Thank You to the AOROs

When it went into effect eight years ago, the Right-to-Know Law gave Pennsylvanians unprecedented access to the workings of their government. It was a great, and long-overdue, improvement. One impact of the law that gets less attention is the fact that it also gave every government agency in Pennsylvania new duties.

Stories about agencies withholding records often get attention. What goes unnoticed too often is the diligent work of the thousands of Agency Open Records Officers (AOROs) and other agency employees who strive to comply with the RTKL and make government more transparent. To them, I say thank you. Your efforts are very much appreciated.

This year, for the first time ever, the OOR conducted a statewide survey of AOROs. We heard from more than 1,250 state agencies, counties, school districts, municipalities, police departments, authorities, and more. We'll present the full results soon. For now, here's a look back at the OOR in 2016.

Erik Arneson, Executive Director
March 2017



Training

70

Trainings Conducted by the OOR in 2016

One of the OOR's core responsibilities is to provide training about the RTKL and the Sunshine Act. In 2016, the OOR conducted 70 training sessions. More than 3,000 public officials, agency employees, and everyday citizens attended these sessions.

We traveled to great cities and towns like Erie, Hawley, Philadelphia, Allentown, Cranberry Township, Horsham, Lancaster, Canonsburg, Middletown, Indiana, Somerset, Bellefonte, Uniontown, and Morgantown.

[Let us know if you'd like to host a training session.](#) We often work with groups and organizations to provide customized training for a particular audience.



Mediation

49

Fully or Partially Successful Mediations in 2016

Mediation is a fantastic way to resolve Right-to-Know disputes, and I'm pleased that the OOR's mediation program expanded significantly in 2016.

Mediations, which can be conducted via telephone or in face-to-face meetings, are all overseen by a trained OOR mediator. We find that these sessions can be extremely helpful — in many cases, the requester and agency haven't been able to fully communicate until mediation begins.

If a mediation is successful, the requester withdraws the appeal once he or she is satisfied with the agency's compliance with the mediated agreement. If mediation isn't successful, the standard appeal process begins. In other words, there's no downside to trying to resolve an appeal with mediation.

More [information about the OOR's Mediation Program](#) is available at our website.

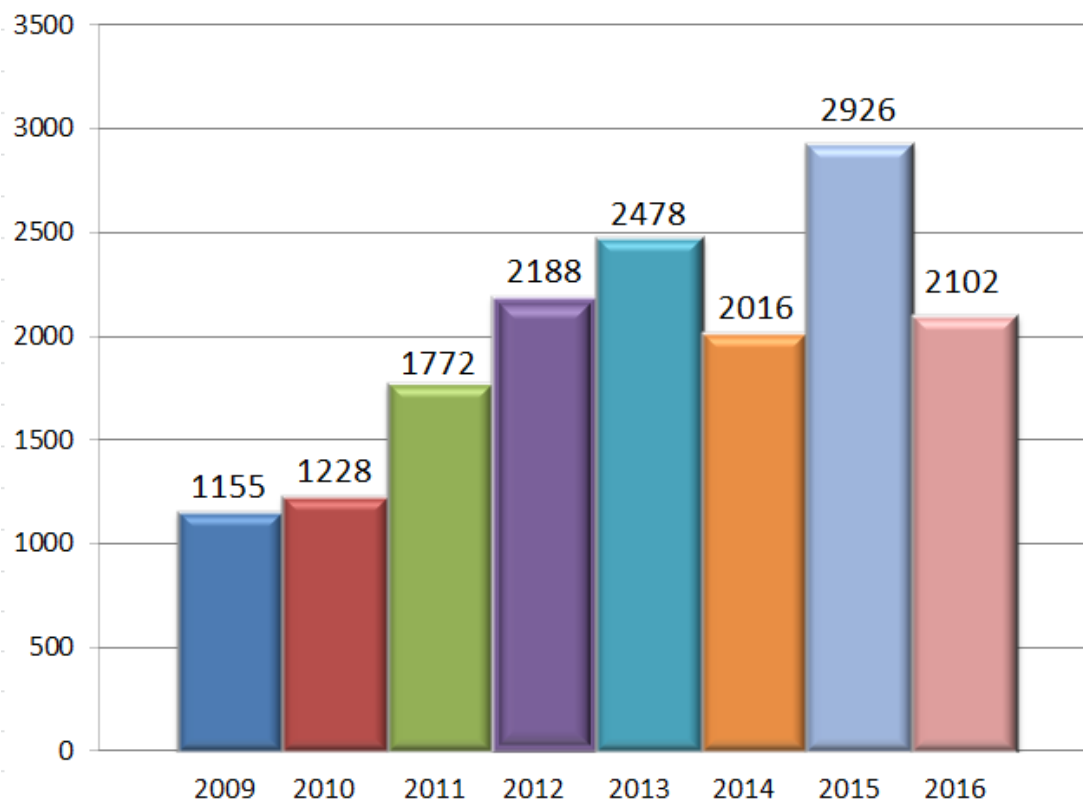
Appeals

2,102

Appeals Filed with the OOR in 2016

The number of appeals filed in 2016 declined from 2015's record-setting pace, but the complexity of issues presented in the cases continued to grow.

Over the past five years, the average number of cases heard by the OOR is 2,342. Predictions are dangerous, especially when they're printed in an annual report where anyone can refer back to them very easily, but... I predict the number of cases over the next several years will remain between 2,000 and 2,500 per year.



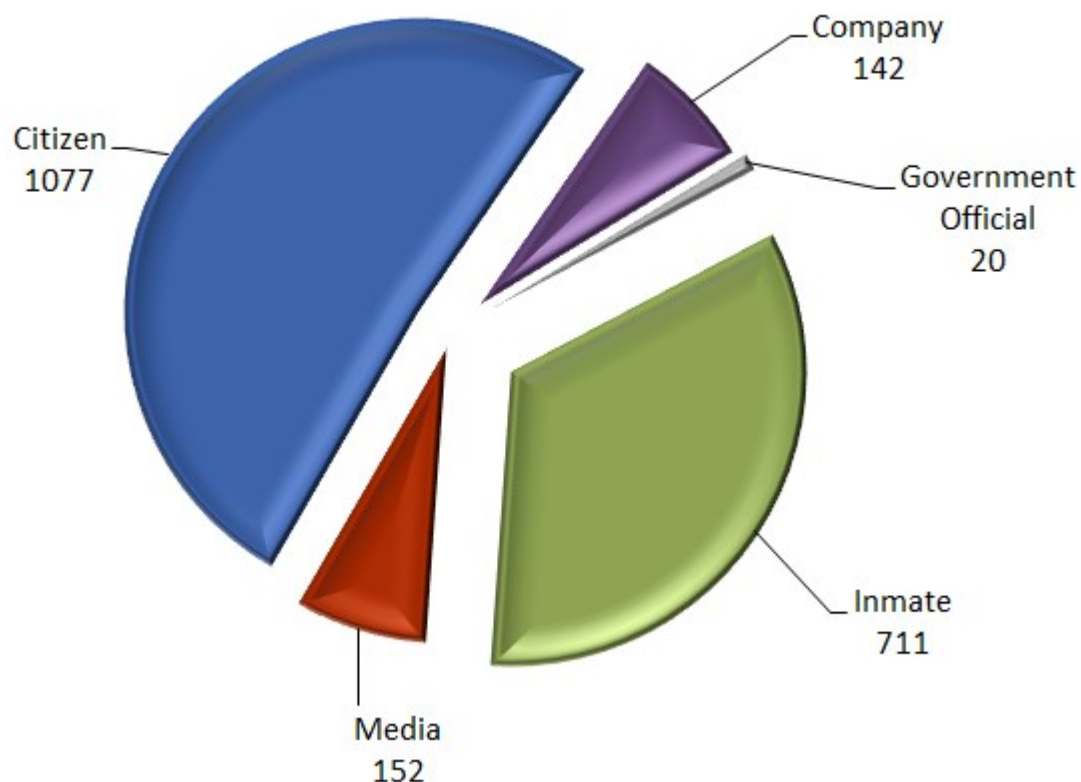
Appeals

1,077

Appeals Filed by Citizens in 2016

More than half of the appeals handled by the OOR last year were filed by average citizens, strong evidence that the RTKL is working for people across the state.

Citizens filed 51% of last year's appeals; inmates filed 34%; members of the media, 7.2%; companies, 6.8%; and government officials, 1%.



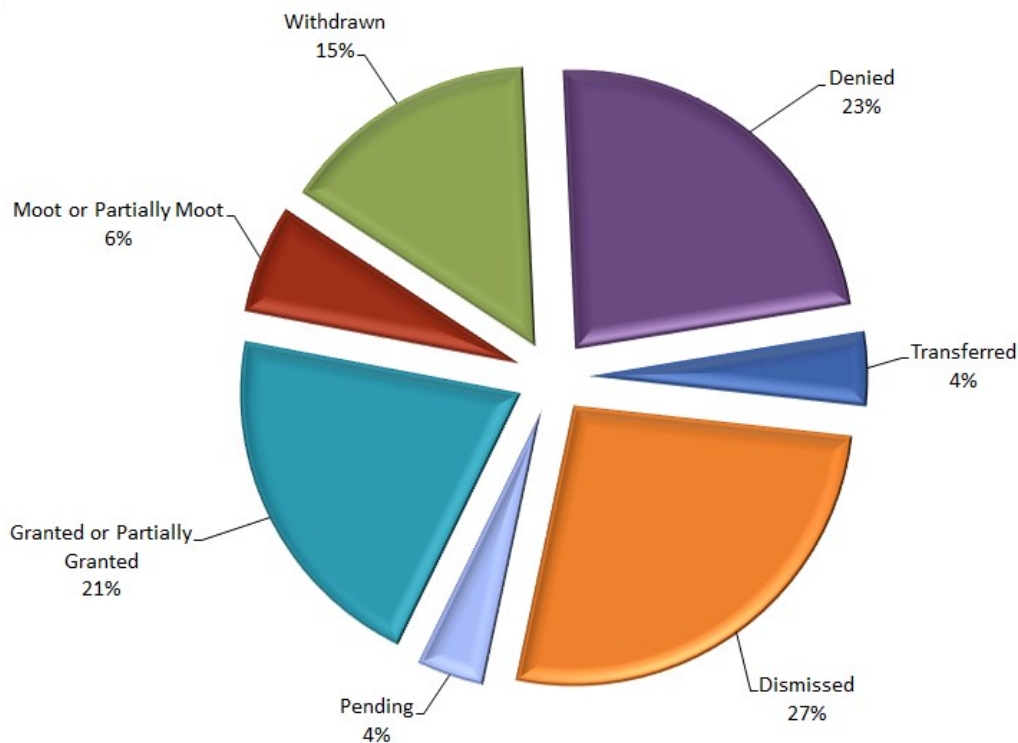
Appeals

549

Non-Inmate Appeals Granted, Withdrawn or Moot in 2016*

Appeals can be grouped into six categories: granted, withdrawn, moot, denied, dismissed, and transferred.

Requesters gain access to records when appeals are granted, of course, but they also often gain access when appeals are withdrawn (only the requester can withdraw an appeal) or found to be moot (usually because records were provided during the appeal).



** Note: This page analyzes non-inmate appeals only. The most common reason appeals are dismissed is that they're filed too early or too late. (Appeals filed too early can be refiled.) Appeals are transferred when the OOR is not the proper venue (e.g., appeals involving a judicial agency or statewide row office).*

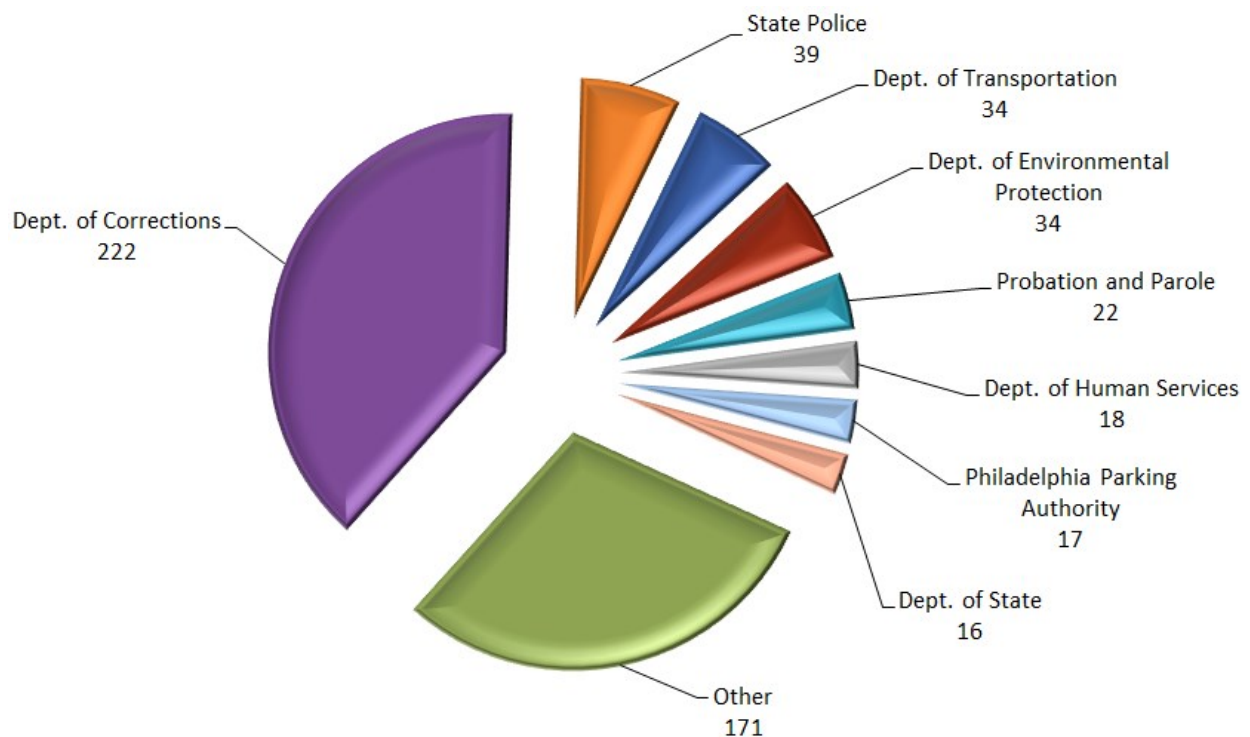
State Appeals

573

Appeals Involving State Agencies in 2016

The Department of Corrections (38.7%) was involved in more appeals than any other state agency in 2016. The vast majority of DOC appeals were filed by inmates.

The State Police were involved in 6.8% of state agency appeals, followed by the Dept. of Transportation (5.9%), the Dept. of Environmental Protection (5.9%), the Board of Probation and Parole (3.8%), the Dept. of Human Services (3.1%), the Philadelphia Parking Authority* (3.0%), and the Dept. of State (2.8%).



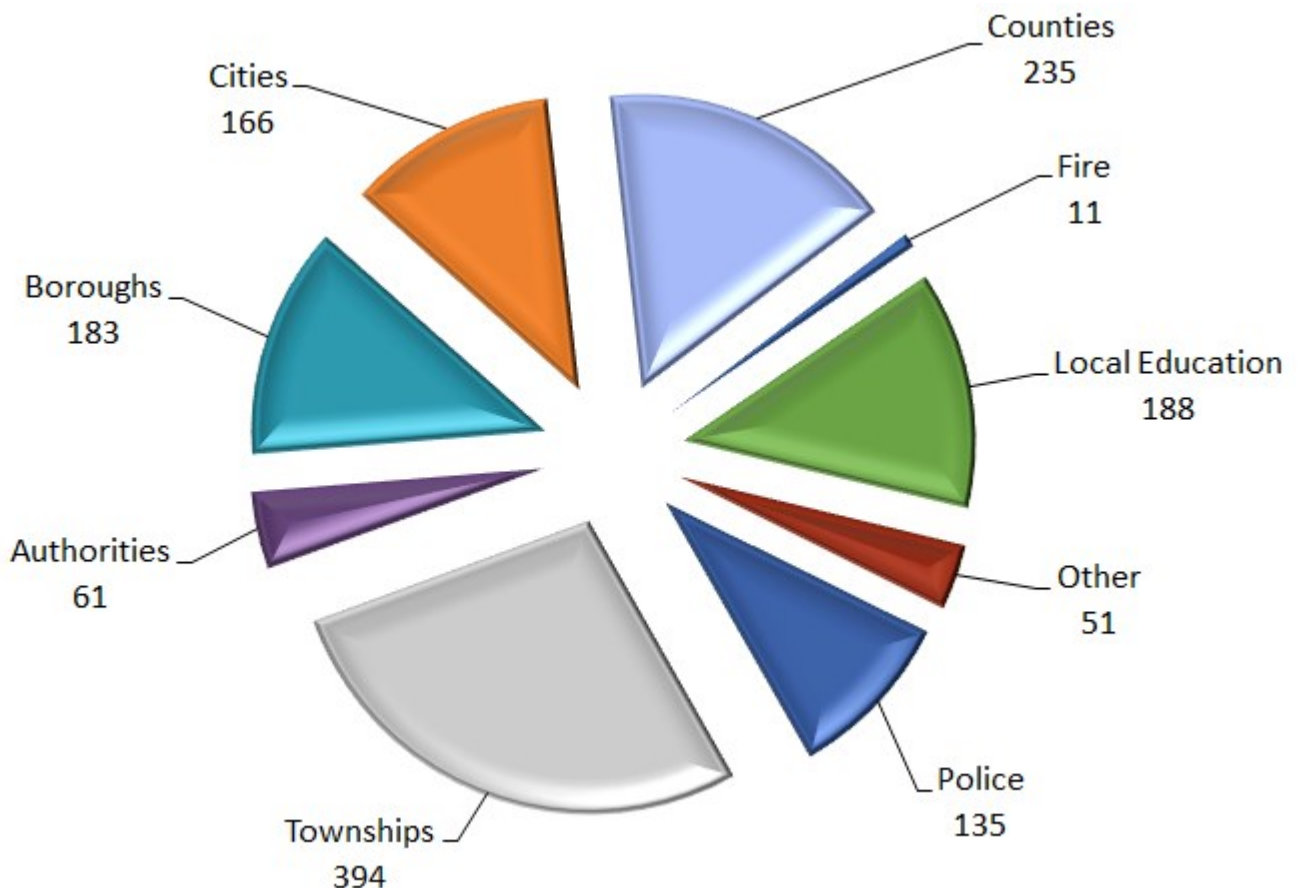
* The Philadelphia Parking Authority is a state agency pursuant to the statute which created it.

Local Appeals

1,424

Appeals Involving Local Agencies in 2016

Among local agencies, municipal governments (cities, boroughs, and townships) were involved in the most appeals last year: 53%. If you include local police and fire departments, that percentage jumps to 63%.

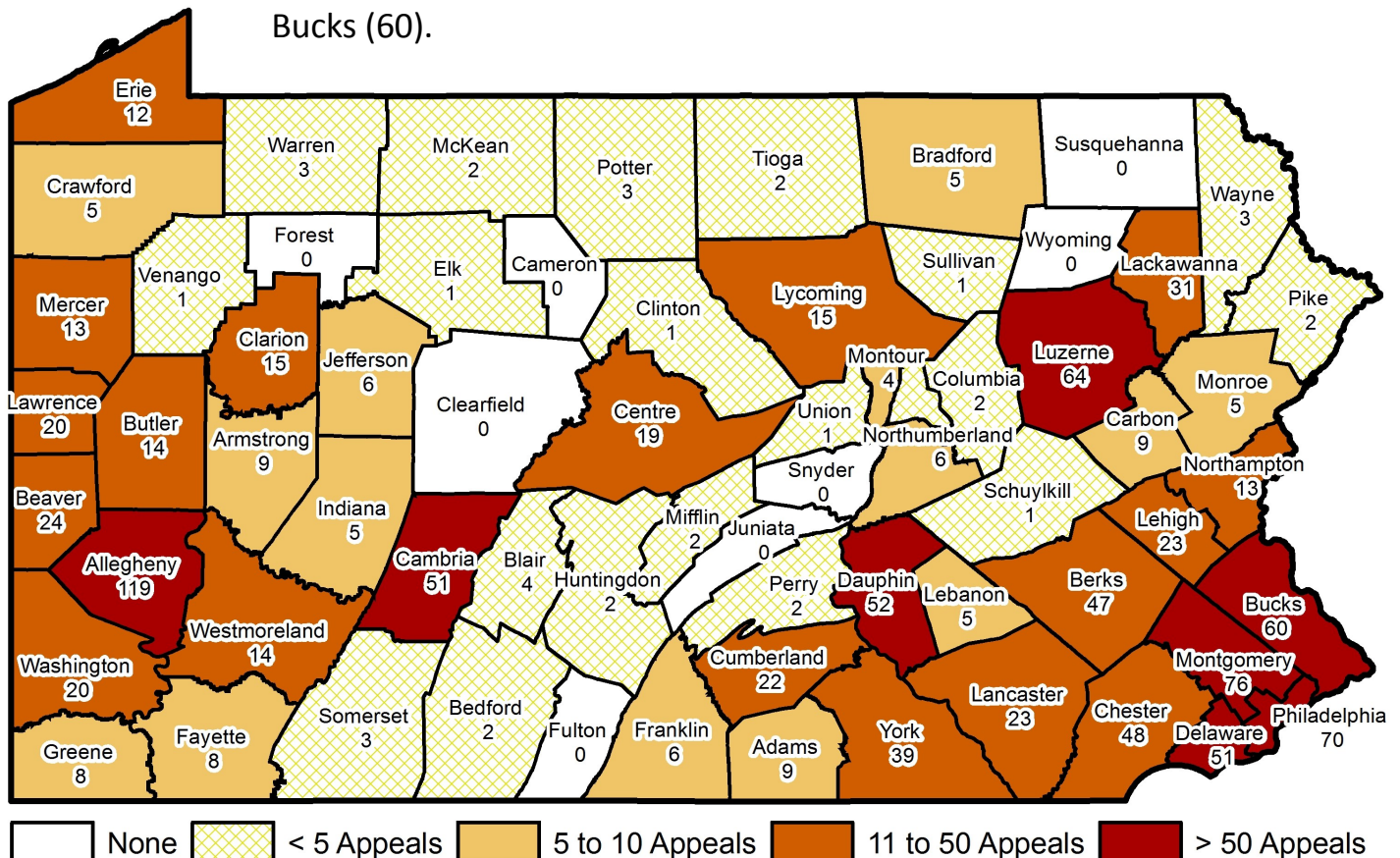


Note: The total of local agency appeals and state agency appeals filed in 2016 is 1,997. The OOR received 68 misdirected judicial and legislative appeals, along with 37 appeals filed against agencies that are not subject to the RTKL.

119

Appeals Involving Agencies in Allegheny County*

More appeals were filed last year involving local agencies in Allegheny County — including the county itself, school districts, municipalities, etc. — than in any other county. (Allegheny County is home to about 130 municipalities and more than 40 school districts.) The top five counties by this measure were Allegheny (119), Montgomery (76), Philadelphia (70), Luzerne (64), and Bucks (60).



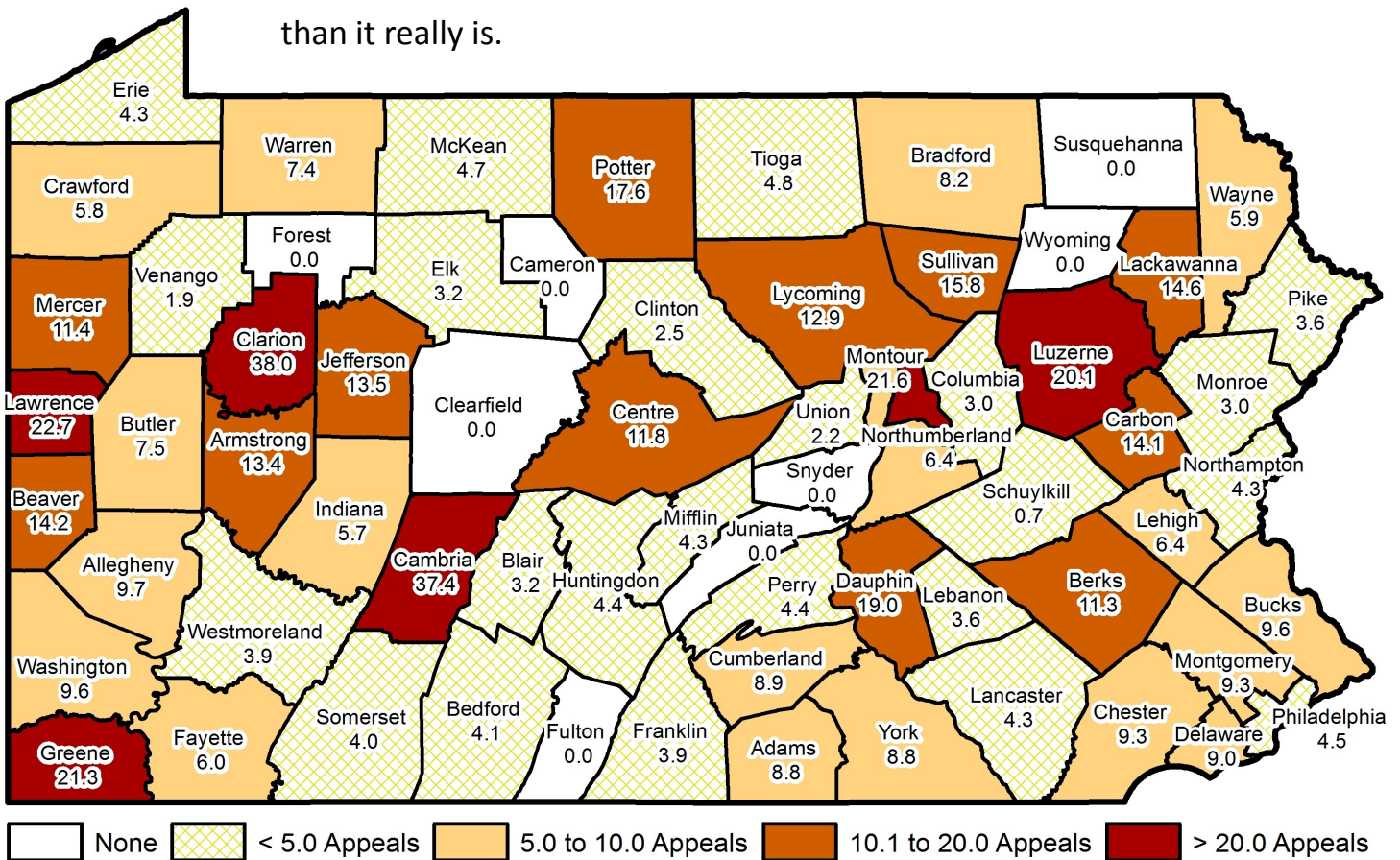
** Data on this page excludes appeals filed against judicial agencies, over which the OOR does not have jurisdiction.*

Local Appeals

38.0

Per Capita* Appeals Involving Agencies in Clarion County

This map examines — in as fair a way as we've been able to develop — the relative impact of RTKL appeals on all of the agencies within each of Pennsylvania's counties. Still, it's important to remember that a relatively small number of appeals filed involving agencies within a small county (Clarion County has about 40,000 residents) can make the impact look more significant than it really is.



* To be precise, per 100,000 population based on 2015 U.S. Census Bureau Population Estimates.

Access to Records

10

Examples of Records the RTKL Provided Access to in 2016

Here's a sampling of the types of records which the RTKL provided access to in 2016:

1. \$2 million paid by Philadelphia School District to defend itself in lawsuits related to a no-bid contract for surveillance cameras.
2. More than \$436,000 paid to defend former Attorney General Kathleen Kane in lawsuits filed by former employees.
3. The misallocation of cash confiscated from suspected drug dealers in Cambria County.
4. The fact that the Pittsburgh Intergovernmental Cooperation Authority was missing financial records and its former director used an ICA debit card for questionable spending. Legislation reforming the ICA, Act 99 of 2016, was subsequently enacted.
5. \$195,000 paid by the State Police to settle a claim that a man was jailed for nearly a month after troopers using a field drug test mistook soap for cocaine.

Access to Records

10

Examples of Records the RTKL Provided Access to in 2016

Here's a sampling of the types of records which the RTKL provided access to in 2016 (*continued*):

6. A recommendation, which was never implemented, to install flashing lights at a railroad crossing where a woman was subsequently killed.
7. A partially redacted report on the Gettysburg Police Department, including recommendations stemming from an officer's use of a Taser during an arrest.
8. \$690,000 paid by Moon Area School District to settle a gender discrimination lawsuit.
9. Documents showing that a PPL executive called the company's storm room to ask about an outage in his neighborhood, leading to a delay in service restoration for other customers.
10. Records showing that the Manheim Township School Board authorized a firm to begin searching for a new superintendent before taking a public vote.

Litigation

7

Top Appellate Court Decisions in 2016

These are some of the most significant appellate court decisions issued in 2016 regarding the RTKL.

[PSEA v. OOR](#), 148 A.3d 142 (Pa. 2016)

The Pennsylvania Supreme Court held that Article I, Section 1, of the state constitution protects personal information such as home addresses. When a record contains such personal information, a balancing test must be performed to determine whether the interest in disclosure outweighs the interest in privacy.

[Commonwealth v. Engelkemier](#), 148 A.3d 522 (Pa. Cmwlth. 2016)

On the issue of specificity, the Commonwealth Court affirmed an OOR Final Determination which held that a keyword list can be sufficient to describe the subject matter in a RTK request, depending on the overall context of the request. The court emphasized the three-part test used to determine whether a request is specific enough under the RTKL, examining the extent to which the request sets forth (1) the subject matter, (2) the scope of documents, and (3) the timeframe.

Litigation

7

Top Appellate Court Decisions in 2016 (cont.)

[PASSHE v. APSCUF](#), 142 A.3d 1023 (Pa. Cmwlt. 2016)

The Commonwealth Court held that in cases involving voluminous records, the OOR may consider a claim by an agency that it cannot conduct a proper review of the responsive records within the RTKL's timeline. The agency must provide an estimated number of records and the length of time required to review the records, along with — if the records are electronic — any anticipated difficulty in delivering them.

[PUC v. Seder](#), 139 A.3d 165 (Pa. 2016)

The Supreme Court upheld the OOR's analysis of the Public Utility Code regarding the required disclosure of a "tip letter" and an investigative file associated with a settlement agreement.

[Township of Worchester v. OOR](#), 129 A.3d 44 (Pa. Cmwlt. 2016)

The Commonwealth Court held that the OOR, which serves as fact-finder in RTKL appeals, has broad discretion to order *in camera* review of records.

Litigation

7

Top Appellate Court Decisions in 2016 (cont.)

[Grine v. County of Centre](#), 138 A.3d 88 (Pa. Cmwlth. 2016)

The Commonwealth Court found that when financial records of a judicial agency documenting activities of judicial personnel are in the possession of, or shared by, a non-judicial agency, those records must nonetheless be requested from the judicial agency “to ensure the judiciary retains control of its records.”

[In re Phila. Dist. Attorney’s Office](#), 2016 Phila. Ct. Com. Pl. LEXIS 55

The Philadelphia Court of Common Pleas found that the Philadelphia District Attorney’s Office acted in bad faith when it did not provide records as ordered by the OOR. The court imposed a \$500 penalty. *Note: The Commonwealth Court upheld this ruling in early 2017, stating that “the Trial Court made the requisite factual findings, supported by substantial record evidence, to conclude as a matter of law that the District Attorney acted in bad faith.”*

Other significant cases from 2016 — and previous years — are [available on the OOR website](#).

RTK Requests

830

Right-to-Know Requests to the OOR in 2016

In addition to deciding appeals filed under the RTKL, the OOR processes hundreds of RTK requests every year. In 2016, we responded to 830 requests.

Most requests filed with the OOR are misdirected: The requester isn't really seeking OOR records; rather, they want records from another agency but mistakenly file the request with the OOR.

Last year, about 91% of RTK requests filed with the OOR were misdirected. However, the OOR responds to every request, and for the misdirected ones, we try to point the requester to best agency.

75 of the requests we received in 2016 were for OOR records. These were typically for copies of Final Determinations, case files, salary information, OOR forms, and the OOR's procedural guidelines.

Online

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Ways to Contact the OOR

Web: <http://www.openrecords.pa.gov>

Email: openrecords@pa.gov

Telephone: (717) 346-9903

Twitter (Office): [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

Twitter (Executive Director): [@ErikOpenRecords](https://twitter.com/ErikOpenRecords)

YouTube: <https://goo.gl/1P7zu0>

And, although it's not technically a way to contact the OOR, anyone who's this far into our Annual Report may be interested in the OOR's email subscriptions — one is a daily digest of every Final Determination issued by the office; the other is for general updates. Subscribe to one or both at our website: Click on "Contact..." then "[Email Subscriptions](#)" and then fill out the form.